

05 JAN 26 2005
U.S. DISTRICT COURT
N.D. OF ALABAMA

In the United States District Court
For the Northern District of Alabama

FORM FOR USE IN APPLICATION FOR
HABEAS CORPUS UNDER 28 U.S.C. § 2254

CIVIL ACTION
CV-05-BE-0150-S

(To be supplied by the Clerk of the District Court)

James Wilbert Walker, Jr.
Full Name of Plaintiff-Petitioner

Limestone Correctional Facility
Place of Confinement

VS.

Billy Mitchem, Warden
(Name of Warden, Superintendent, Jailer, or authorized
person having custody of petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF ALABAMA,
Respondents

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 USC § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

INSTRUCTIONS -- READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Do not use this form unless you were convicted in one of the following counties: BIBB, BLOUNT, CALHOUN, CHEROKEE, CLAY, CLEBURN, COLBERT, CULLMAN, DeKALB, ETOWAH, FAYETTE, FRANKLIN, GREENE, JACKSON, JEFFERSON, LAMAR, LAUDERDALE, LAWRENCE, LIMESTONE, MADISON, MARION, MARSHALL, MORGAN, PICKENS, SHELBY, ST. CLAIR, SUMTER, TALLADEGA, TUSCALOOSA, WALKER, WINSTON.

- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, *the original and two copies* must be mailed to the Clerk of the United States District Court for the Northern District of Alabama, 104 Federal Courthouse, 1800 Fifth Avenue, North, Birmingham, Alabama 35203.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction under attack
Circuit Court of Chilton County
2. Date of judgment of conviction December 13, 1999
3. Length of sentence 15 years concurrent on all accounts
4. Nature of offense involved (all counts) 2 counts rape II, 1 count Sodomy II

5. What was your plea? (Check one)
 (a) Not guilty (☒)
 (b) Guilty ()
 (c) Nolo contendere ()
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. Kind of trial: (Check one)
 (a) Jury ()
 (b) Judge only (☒)
7. Did you testify at the trial?
 Yes (☒) No ()

8. Did you appeal from the judgment of conviction?
Yes (☒) No (☐)
9. If you did appeal, answer the following:
(a) Name of court Alabama Court of Criminal Appeals
(b) Result Affirmed
(c) Date of result May 10, 2001
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes (☒) No (☐)
11. If your answer to 10 was "yes," give the following information:
- (a) (1) Name of court Alabama Supreme Court
(2) Nature of proceeding Writ of Certiorari
(3) Grounds raised Ala. R. Crim. P. 32 violation of due process that the state had deliberately suppressed evidence prior to trial and his attorney committed a number of errors that contributed to the negative result.
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes (☐) No (☒)
(5) Result Writ denied
(6) Date of result August 31, 2001
- (b) As to any second petition, application or motion give the same information:
(1) Name of court Chilton County Circuit Court
(2) Nature of proceeding Ala. R. Crim. P. 32 Rule
(3) Grounds raised state had deliberately suppressed evidence prior to trial and his attorney committed a number of errors that contributed to the negative result
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes (☒) No (☐)
(5) Result Denied
(6) Date of result September 2, 2002
- (c) As to any third petition, application or motion, give the same information:
(1) Name of court Alabama Court of Criminal Appeals : Supreme Ct. of Al.
(2) Nature of proceeding Review of denial of Rule 32 petition
(3) Grounds raised same as above
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes (☐) No (☒)

- (5) Result Circuit Court affirmed ; Criminal appeal Court affirmed
- (6) Date of result March 14, 2003 ; August 15, 2003
- (d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?
- (1) First petition, etc Yes (X) No ()
- (2) Second petition, etc Yes (X) No ()
- (3) Third petition, etc Yes (X) No ()
- (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully. Do not check any of these listed grounds. If you select one or more of these grounds for relief you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand jury or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant
 Supporting FACTS (tell your story briefly without citing cases or law):
Jennifer Walker, the alleged victim, recanted the allegations she had made against the petitioner in a juvenile court hearing at which time both her attorney and the prosecutor advised her that she faced the possibility of perjury if she recanted at the trial of the petitioner. The alleged victim continually recants the accusations and wrote so in a letter that the prosecutor withheld from the petitioner prior to trial.
- B. Ground two: The defendant never waived his right to a trial by jury and there was never any ascertainment by the court of the defendant's intent.
 Supporting FACTS (tell your story briefly without citing cases or law): _____

- C. Ground three: _____
 Supporting FACTS (tell your story briefly without citing cases or law): _____
- D. Ground four: _____
 Supporting FACTS (tell your story briefly without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____
14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes () No (X)
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
 (a) At preliminary hearing _____

- (b) At arraignment and plea Hon. David B. Karn
P.O. Box 108, Clanton, AL 35046
- (c) At trial same
- (d) At sentencing same
- (e) On appeal Hon. William M. Bowden, Jr.
2025 3rd Ave. N, Suite 600, B'ham, AL 35203
- (f) In any post-conviction proceeding Hon. William E. Swatek
230 Bearden Road, Pelham, AL 35124
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes (X) No ()

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes () No (X)

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes () No ()

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Lindsay B. Erwin ERW005
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on January 25, 2005

(date)

Signature of Petitioner